

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
7 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER
8 COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER
9 COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN
10 ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
11

12 At a stated term of the United States Court of Appeals for the
13 Second Circuit, held at the Thurgood Marshall United States
14 Courthouse, Foley Square, in the City of New York, on the 23rd day
15 of September, two thousand and four.
16

17 PRESENT:
18

19 HON. ROBERT D. SACK,
20 HON. REENA RAGGI,
21 HON. PETER W. HALL,
22

23 Circuit Judges.
24

25 -----
26
27 UNITED STATES OF AMERICA,
28

29 Plaintiff-Appellee,
30

31 CHARLES M. CARBERRY,
32

33 Appellee,
34

35 - v. -
36

No. 03-6196, 03-6210

37 WILLIAM T. HOGAN, JR., and DANE M. PASSO,
38

39 Appellants,
40

41 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
42 AND HELPERS OF AMERICA, AFL-CIO, THE COMMISSION OF LA COSA
43 NOSTRA, ANTHONY SALERNO, also known as Fat Tony, MATTHEW
44 IANNIELLO, also known as Matty the Horse, ANTHONY PROVENZANO,
45 also known as Tony Pro, NUNZIO PROVENZANO, also known as Nunzi
46 Pro, ANTHONY CORALLO, also known as Tony Ducks, SALVATORE
47 SANTORO, also known as Tom Mix, CHRISTOPHER FURNARI, SR., also
48 known as Christie Tick, FRANK MANZO, CARMINE PERSICO, also known
49 as Junior, also known as The Snake, GENNARO LANGELLA, also known

1 as Gerry Lang, NICHOLAS MARANGELLO, also known as Nicky Glasses,
2 JOSEPH MASSINO, also known as Joey Messina, ANTHONY FICAROTTA,
3 also known as Figgy, EUGENE BOFFA, SR., FRANCIS SHEERAN, MILTON
4 ROCKMAN, also known as Maishe, JOHN TRONOLONE, also known as
5 Peanuts, JOSEPH JOHN AIUPPA, also known as Joey O'Brien, also
6 known as Joe Doves, also known as Joey Aiuppa, JOHN PHILLIP
7 CERONE, also known as Jackie the Lackie, also known as Jackie
8 Cerone, JOSEPH LOMBARDO, also known as Joey the Clown, ANGELO
9 LAPIETRA, also known as The Nutcracker, FRANK BALISTRIERI, also
10 known as Mr. B, CARL ANGELO DELUNA, also known as Toughy, CARL
11 CIVELLA, also known as Corky, ANTHONY THOMAS CIVELLA, also known
12 as Tony Ripe, GENERAL EXECUTIVE BOARD, INTERNATIONAL BROTHERHOOD
13 OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
14 JACKIE PRESSER, General President, WELDON MATHIS, General
15 Secretary-Treasurer, JOSEPH TREROTOLA, also known as Joe T, First
16 Vice President, ROBERT HOLMES, SR., Second Vice-President,
17 WILLIAM J. MCCARTHY, Third Vice President, JOSEPH W. MORGAN,
18 Fourth Vice President, EDWARD M. LAWSON, Fifth Vice President,
19 ARNOLD WEINMEISTER, Sixth Vice President, JOHN H. CLEVELAND,
20 Seventh Vice President, MAURICE R. SCHURR, Eighth Vice President,
21 DONALD PETERS, Ninth Vice President, WALTER J. SHEA, Tenth Vice
22 President, HAROLD FRIEDMAN, Eleventh Vice President, JACK D. COX,
23 Twelfth Vice President, DON L. WEST, Thirteenth Vice President,
24 MICHAEL J. RILEY, Fourteenth Vice President, THEODORE COZZA,
25 Fifteenth Vice President, DANIEL LIGUROTIS, Sixteenth Vice
26 President, SALVATORE PROVENZANO, also known as Sammy Pro, Former
27 Vice President, MICHAEL C. BANE,
28

29 Defendants.
30
31 -----
32

33 For Appellants: MATTHIAS A. LYDON, Winston & Strawn LLP,
34 Chicago, IL (Derek G. Barella, Anthony
35 DiSarro, Jonathan H. Lewis, Winston &
36 Strawn LLP, Chicago IL).
37

38 PATRICK J. COTTER, Arnstein & Lehr LLP,
39 Chicago, IL.
40

41 For Appellees: ANDREW W. SCHILLING, Assistant United
42 States Attorney (David N. Kelley, United
43 States Attorney for the Southern
44 District of New York, Meredith E.
45 Kotler, Assistant United States
46 Attorney, of counsel), New York, NY.
47

CHARLES M. CARBERRY, Independent Review
Board Chief Investigator (Todd R.
Geremia, Jones Day, of counsel), New
York, NY.

Appeal from a judgment of the United States District Court
for the Southern District of New York (Loretta A. Preska, Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED that the judgment dated August 25, 2003, be, and it
hereby is, AFFIRMED.

William Hogan and Dane Passo appeal from the August 25,
2003, judgment of the United States District Court for the
Southern District of New York (Loretta A. Preska, Judge)
affirming the findings of the Independent Review Board ("IRB") of
the International Brotherhood of Teamsters ("IBT"). United
States v. IBT, No. 88 Civ. 4486 (LAP), 2003 WL 21998009, 2003
U.S. Dist. LEXIS 14508 (S.D.N.Y. Aug. 25, 2003). The IRB found
that Hogan and Passo colluded with a non-union employer to enter
into a contract that would harm members of IBT Local 631 and
thereby brought reproach on the union in violation of Article II,
Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT
Constitution.

Hogan and Passo argue that the IRB decision impermissibly
violated their free speech rights under the First Amendment and
the Labor-Management Reporting and Disclosure Act of 1959
("LMRDA"). The district court was correct in concluding,
however, that the IRB's sanctions were not for the mere advocacy
of ideas, but were a response to the actions Hogan and Passo took
to benefit their friend Richard Simon and Hogan's brother, which
they knew would harm the Local. Because the IRB's efforts were
designed to rid the Local of the defendants' corrupt influence,
the district court did not err in finding that the IRB's behavior
did not violate Hogan and Passo's rights under the LMRDA or the
First Amendment. See United States v. IBT ("DiGirlando"), 19 F.3d
816, 823 (2d Cir. 1994).

Hogan and Passo also argue that the proposed contract would
not have harmed the union. We review the IRB's decision for
"substantial evidence." United States v. IBT ("Giacumbo"), 170
F.3d 136, 143 (2d Cir. 1999). Assuming the IRB's factual
findings are supported by "substantial evidence," we disturb its
findings only if they are "arbitrary and capricious." Id. Based
on an exhaustive hearing during which both Passo and Hogan
testified, the IRB expressly found that "Passo and Hogan colluded
with Simon to enable Simon to profit from paying his workers

1 below the rates the governing Teamster contract required. . . .
2 There was no benefit to Local 631, its members or the United
3 employees. In fact, they were repeatedly harmed. Passo's and
4 Hogan's claimed reasons for advocating the agreement with United
5 are not believable." IRB Decision at 57. Having carefully
6 reviewed the hearing record, we conclude that the IRB's findings
7 are supported by substantial evidence, are not arbitrary or
8 capricious, and plainly demonstrate that Hogan and Passo were
9 negotiating a contract that they knew would have harmed the
10 union.

11 Hogan and Passo also argue that the IRB exceeded its
12 authority in reaching its determination that Passo and Hogan's
13 conduct brought reproach upon the IBT. The IRB has a broad grant
14 of authority, including the ability to investigate and discipline
15 any person whose actions bring reproach upon the union. See
16 United States v. IBT ("Mireles & Roa"), 315 F.3d 97, 99 (2d Cir.
17 2002). In light of Hogan and Passo's conduct, the IRB has not
18 exceeded its broad authority in this case. Hogan and Passo's
19 argument is without merit.

20 Finally, Hogan and Passo argue that the IRB's choice of
21 sanction was excessive. "The court must sustain the IRB's
22 determination unless it finds the penalty 'unwarranted in law' or
23 'without justification in fact.'" Giacumbo, 170 F.3d at 144.
24 "The choice of appropriate sanctions . . . [is] peculiarly within
25 the purview of the IRB." Id. This Court recently stated that
26 "[e]xpulsion from union membership, though a drastic sanction, is
27 permissible under the LMRDA if the union's constitution so
28 provides. There is no dispute that the IBT Constitution provides
29 that a member may be stripped of membership rights if found
30 guilty of misconduct." United States v. Boggia, 167 F.3d 113,
31 120 (2d Cir. 1999) (citation omitted). Based on the evidence
32 presented to it, the IRB found that Hogan and Passo colluded to
33 push through a contract that threatened to undermine the
34 bargaining position, wages, and benefits of Local 631; that they
35 did so to aid their friend and Hogan's brother; that, in doing
36 so, they instigated the firing of several union officers who
37 opposed Hogan's and Passo's efforts to secure a contract with
38 Simon; that they lied to local union officials in an effort to
39 pressure them into approving the contract; and that they did all
40 this while in positions of trust. Ample evidence supported the
41 IRB's findings, and therefore the sanction of expulsion was well
42 within the IRB's broad discretion.

For the foregoing reasons, the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:

ROSEANN B. MACKECHNIE, Clerk

September 23, 2004

By: Oliva M. George, Deputy Clerk Date